

Tapes that shake the state

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Political shocks and stress are nothing new for Ukraine. When somebody or something lifts the "political carpets" that normally carefully hide reality, the underlying things may look ugly and appalling at the beginning, but the agitation they cause fades after a short while and attention switches to new events. As far as Ukrainian political crises, conflicts and scandals are concerned, one may refer to ex-head of the SBU Volodymyr Radchenko, who calmly remarked in 1997 that "long ago, everybody got used to reports that somebody had stolen a factory" (Zerkalo Nedeli, November 15, 1997).

A logical question should follow: why has everybody got used to that? Is that because such things happen in this country all the time? If it because such announcements are designed just to attract attention with nothing real behind them? Anyway, Ukrainian political crises tend to be forgotten rather quickly, and after a short while the society hardly believes in them. An average "small Ukrainian" hardly remembers the 1998 crisis caused by exorbitant, by Ukrainian standards, costs of refurbishment of the Ukraina Palace. The future of millions of dollars embezzled by ex-prime Minister Pavlo Lazarenko, currently waiting for a trial in an American prison ceased being in focus of public scrutiny. Yet, the current crisis experienced by the Ukrainian top-ranking power bodies is both unexpected and shocking for the society. "Oh God, who rules here?!" - that may be an ordinary Ukrainian's reaction to the revealing statements made recently in reference to top officials of this state. The question may even push aside the usual social problems and contribute to the general sense of insecurity.

Chronicle of the Tape Scandal

The scandal exploded, when ex-Speaker of the Verkhovna Rada of Ukraine, leader of the Socialist Party Oleksandr Moroz, MP, announced on November 28, 2000 to the Ukrainian parliament and later the journalist community that "the case of journalist Georgy Gongadze, who disappeared, was ordered by head of the Administration of the President, Volodymyr Lytvyn, and performed by Minister of the Interior Yuri Kravchenko" (Ukraina Moloda, November 29, 2000). He stated he had a recorded conversation between President Kuchma and Yuri Kravchenko, reportedly made by an unnamed SBU officer. According to Moroz, President Kuchma personally dealt with "that problem, gave orders and controlled their execution" (UNIAN, November 28, 2000). "I would not want [the fact of] making the records public look as if I challenge Leonid Kuchma. I am worried that politicians, deputies, journalists disappear in this state but nobody cares", he said (Vysoky Zamok, November 29, 2000). The slight breeze of possible impeachment swept the political environment but vanished as unlikely in a state that lacks a law in impeachment.

The President's press service condemned the statement as "offence and libel", arguing that "the statement is totally groundless. The President of Ukraine retains the right for "adequate actions, up to protecting his honor and dignity at court" (Den, November 29, 2000). The Presidential chief of staff Volodymyr Lytvyn announced he "had to" sue Moroz "to protect his honor and dignity" (Molod Ukraina, November 30, 2000).

The PR division of the Interior Ministry also made a statement, claiming it has been authorized to appeal to the Office of Attorney General of Ukraine for "legal assessment of the facts, made public by Oleksandr Moroz, MP, at the plenary session of the Verkhovna Rada on November 28".

The SBU press service condemned Oleksandr Moroz's statements about "the involvement of SBU officers in recording conversations of top officials" of this state as "rude provocation that contains evidence of crime specified by Article 125 (libel) of the Criminal Code of Ukraine" (Interfax-Ukraina, November 28, 2000).

On December 1, 2000, it was announced that the Pechersk Borough Court of Kyiv had opened a criminal case against leader of the Socialist Party Oleksandr Moroz "based on Article 125 (libel) of the Criminal Code of Ukraine" (Uriadovyi Kurrier, December 2, 2000). The Interfax-Ukraina agency, referring to some "informed sources in the procurature", announced that "the criminal case was started sue to a suit filed by head of the Presidential Administration Volodymyr Lytvyn.

Gradually, new details were added to the tape scandal. Ukrainian Communist leader Petro Symonenko announced that on November 11 he had been approached by some anonymous individuals asking him to make public recorded conversations of top state officials about Gongadze. Then, Symonenko demonstrated wonders of political correctness, for, reportedly, he was not sure the tape was not a fake. However, the statement was challenged by Oleksandr Moroz, who argued that he had received the tape before the date named by Symonenko.

Shortly afterwards chairman of the Parliamentary Committee for Fighting Organized Crime and Corruption Yuri Karmazin announced that "leader of the Socialist Party Oleksandr Moroz possesses other fragments of audio records of alleged conversations of this country's President Leonid Kuchma besides those he made public before" (Den, December 6, 2000). According to Karmazin, Moroz personally told him that. Karmazin also announced that pursuant to the decision of the Parliamentary Committee for Fighting Organized Crime and Corruption he personally had given the tapes for expert analysis to the Council of Europe.

On December 6, 2000, President Kuchma broke his silence for the first time, almost a week from the beginning of the scandal, to state that "behind the coordinated actions of the anonymous individuals one can trace a professionally trained style of those who have practiced well in that. The unfair and dirty game is under way. Certain Ukrainian politicians have allowed themselves to drag it, but the script, apparently, was not written by them. I have nothing to make excuses of. And nobody, no campaign, nobody's blackmail will push, will provoke me to take any authoritarian action or changes of the political course. I have acted and will act within the law. Democratic foundations will continue to be established consistently in Ukraine". The President went on to sign a decree granting Oleksandr Moroz state protection for three months, as Moroz had requested.

New details of the tape scandal surfaced on December 8, 2000. After the charges, made by Moroz at the parliament's plenary session, the ad hoc commission on investigation into the Gongadze case, led by Oleksandr Lavrynovych, MP, sent some of its members to meet the person who had allegedly recorded the tape and given it to Moroz, in order to document his statement and present it to the commission. Yet, when returning after the meeting that reportedly took place in a Schengen state, members of the ad hoc commission, members of the Ukrainian parliament Serhiy Holovaty, Victor Shyshkin and Oleksandr Zhyr were searched by the customs officers who confiscated the video tape of the SBU officer's testimony. The search, performed against the law "On the Status of a People's Deputy" was a gross abuse and was eventually recognized as such by the Office of Attorney general. Commenting on the event, Attorney General of Ukraine Mykhailo Potebenko admitted that "immunity rights of the people's deputies of Ukraine had been abused... And there is no doubt that the individuals, guilty of that, should be liable [for the offence] (Silski Visti, December 14, 2000). In his turn, head of the State Customs Service of Ukraine Yuri Solovkov told the parliament that the Boryspil customs officers who had searched the MPs on December 8 "can be considered fired".

On December 11, members of the parliament's ad hoc commission Serhiy Holovaty, Victor Shyshkin (formerly Attorney General of Ukraine) and Oleksandr Zhyr gave a press conference to announce they were "100% certain that the audio tape given to Oleksandr Moroz by the state security office is authentic" (Vlada i Polityka, December 15, 2000) and announced the name of the SBU officer who had made the scandalous tape. Mykola Melnychenko, 34, officer of the President's security service, had had direct access to all facilities used by the President of Ukraine. According to Melnychenko, he started "the recording, or, more exactly, documentation of the President of Ukraine" after "becoming a witness, in the course of service, of President Kuchma giving a criminal order and only after finding out that the order had been performed" (Holos Ukrainy, December 13, 2000).

On December 12, 2000, the plenary session of the Verkhovna Rada watched the 24-minute video testimony of SBU officer Mykola Melnychenko, filmed by Shyshkin, Zhyr and Holovaty. The decision to watch the video was supported by votes of 281 MPs, with only one MP voting against it. The filmed testimony, apparently, shocked the parliament, when the SBU officer stated from the screen: "I made the oath of allegiance to Ukraine. I did not make any oath to Kuchma to perform his criminal orders." According to Melnychenko (as reported by Tovarysh, No. 50, December 2000), President Kuchma ordered Interior Minister Yuri Kravchenko, head of the State Taxation Administration Mykola Azarov, head of the SBU Leonid Derkach to exert "pressure on a number of mass media, as well as MPs; the names included Serhiy Teriokhin, Serhiy Holovaty, Hennady Balashov, Yuri Kostenko, Oleksandr Tkachenko, Ludmyla Suprun, Anatoly Yermak, Hryhory Omelchenko, as well as Yulia Tymoshenko and Yevhen Marchuk" (Ukraina Moloda, December 13, 2000).

The Ukrainian "ministers of force" reacted strongly negatively to the statements. When summoned to the parliament to report, Attorney General Mykhailo Potebenko announced he saw "no grounds for initiating a criminal case against Minister of the Interior of Ukraine Yuri Kravchenko and head of the SBU Leonid Derkach in accordance with materials of the video record of the testimony of Security Service officer Mykola Melnychenko (Vlada i Polityka, December 15, 2000).

On December 14, the parliament approved a resolution recommending President Kuchma to dismiss SBU head Leonid Derkach and head of the State Customs Service Yuri Solovkov. Later that day the MPs listened rather skeptically to Oleksandr Lavrynovych, head of the ad hoc commission for investigation into the Gongadze case and watched another video tape - Mykola Melnychenko's

statement about alleged order of Leonid Kuchma to organize a terrorist attack in Kryvyi Rig in 1999, reportedly aiming at destroying Oleksandr Moroz as a politician (see Holos Ukrainy, December 15, 2000). The video statement stressed the involvement of top state officials in repression against a number of opposition newspapers, firms, banks, foundations, and falsification of the 1999 presidential election results.

The "ministers of force" were laconic in their comments. Following the review of the video tape, Mykhailo Potebenko stated that although he had "some doubts to a certain extent before that there was something in that, but from now on [he] is absolutely sure that all the video tapes are fakes" (UR-1, Novyny, December 14, 2000). Minister of the Interior Yuri Kravchenko announced to the parliament: "Today I officially state that I did not have such conversations with the President of [this] state. I did not receive any orders from the President of [this] state, and I did not give any orders to my subordinates" (UT-1, UTN, December 14, 2000). Head of the SBU Leonid Derkach also argued that "the audio tape of the conversations of the President are nothing else than a fake" (Inter, December 14, 2000).

It is worth noting that on November 28 representatives of the SBU described the tape as "provocation" designed primarily "to divert public attention from the trial of Serhiy Ivanchenko, Oleksandr Moroz's authorized representative during the past presidential election, brought to trial on charges of assassination attempt against a group of members of parliament" (Interfax-Ukraine, November 28, 2000). The second session in the trial of Ivanchenko, accused of planning assassination of Natalia Vitrenko and Volodymyr Marchenko in Kryvyi Rig in the autumn of 1999, was scheduled to take place on December 4, 2000. According to Attorney General Potebenko, Mykola Melnychenko's statements were aimed at diverting the blow from Oleksandr Moroz in the Ivanchenko case to be heard shortly by the court. The case itself looks rather ambiguous and murky, but Serhiy Ivanchenko has spent over a year in pre-trial detention waiting for the trial. However, the sequence of presentation of the materials by Moroz, from the "Gongadze case" to the "Ivanchenko case", casts little light on the last year tragedy.

Problems of Expert Analysis

Claims that the tapes are "fakes" have been rather common lately. However, the legitimacy of such comments made by senior law enforcement officers before the necessary testing of the materials is highly questionable, as they only lead all parties to the process from the truth. The expert analysis of the tape is a critical point of the investigation. Meanwhile, many MPs seem to share the opinion of Oleksandr Zhyr that it is impossible to perform an unbiased expert analysis of the tape for "under the current law, the Attorney General is completely dependent on the President" and also because "nobody denies today" that the tapes may be authentic and that they contain negative information about the law enforcement agencies (Chas, December 15, 2000).

The Attorney General strongly insists that the tapes must be tested in Ukraine: "We will not send the tape for expertise to international organizations" (Uriadovyi Kurrier, December 12, 2000). According to Mykhailo Potebenko, foreign experts bear no liability to Ukraine for giving erroneous or incorrect data, while in Ukraine "we appoint an expert who faces criminal liability for giving obviously erroneous conclusions" (Uriadovyi Kurrier, December 12, 2000). However, expert analysis of the tape in Ukraine is likely to face multiple challenges. For instance, on December 6, 2000, Deputy Attorney General Oleksiy Bahanets publicly announced that "the investigation so far has not been able to appoint the expertise of the tape since there is no guarantee of availability of the original record" (Holos Ukrainy, December 8, 2000). According to Bahanets, "Moroz avoids answering [whether] the tape he gave to attention of the Attorney General is an original or a copy" (ibid.) Oleksandr Moroz, in his turn, rejects such claims: "there are eleven episodes of conversations of different people on the tape. Hence, this cannot be the original in principle, and they are perfectly aware of that" (ibid.). While the necessity of expert analysis of the tape is not questioned, due to a number of circumstances the actual analysis of the materials has been delayed.

Meanwhile, some foreign experts doubt it is technically possible to perform valid expert analysis of the tapes. According to the opinion of an experience Belgian lawyer, member of the European Bar Association, published at the Radio Liberty web site, there are only a few companies in the world that can find out whether the voices are authentic or not with the help of the so-called speech verification software. To date, there has been only one claim that the tape had been tested abroad. On December 7, 2000, the Kyiv-based English-language weekly, the Kyiv Post, reported about tests performed on the tape in the Netherlands. According to the Kyiv Post, the scandalous tape, linking President Kuchma to the disappearance of the opposition journalist, is a genuine recording and not a computer-made fake. The Kyiv Post referred to the opinion of experts of the TNO, a Dutch applied research institution, who had confirmed that the recording was real but that the voices could be identified only by means of subjective analysis by hundreds of experts personally acquainted with speaking habits of the

individuals whose voices had been allegedly recorded. Since the record itself presents a combination of eleven episodes, the expert analysis dilemma so far has offered more questions than answers.

Possible Outcomes

The Ukrainian establishment is going through a political crisis that is likely to escalate. Yet, different forces in the policy-making community offer different interpretations of the process. On December 13, 2000, following an emotional plenary session of the Verkhovna Rada, the President's spokesman Oleksandr Martynenko was broadcast by the country's major TV news program as saying he did not regard the events in the parliament to signify a political crisis. In his opinion, "crisis begins when there are unresolvable contradictions between the branches of power, for instance, between the President, the government and the parliament, when an acute conflict begins. This is what I actually call a crisis. Since nobody say any conflict between the branches of power yesterday, it seems to me that there are no grounds whatsoever to speak about the beginning or the culmination of <...> a political crisis in the country" (1+1, TSN, December 13, 2000). Oleksandr Martynenko's interpretation of the events was strongly challenged by the developments in the parliament the next day, when Ukrainian law enforcement ministers served as catalysts of escalation of the political conflict. At a morning parliamentary session, members of the parliament approved, by 231 votes, a resolution recommending the President to dismiss Leonid Derkach and Yuri Solovkov and demanding that the draft law "On Ad Hoc Investigative Commissions of the Verkhovna Rada of Ukraine" be reconsidered and approved in order to legitimize activities of the investigative commissions pursuant to provisions of Article 89 of the Constitution). The draft resolution demanding dismissal of head of the SBU and the State Customs Service was supported by 228 votes, by the MPs' enthusiasm vanished when it came to voting for the dismissal of each of the top law enforcement officers personally. The demand for forced resignation of Solovkov was backed by only 177 MPs.

What the conclusions of the political crisis can be for all of the parties involved? It looks like SBU head Leonid Derkach and Customs Service head Yuri Solovkov may be forced to resign. There are some hints that Minister of the Interior Yuri Kravchenko may choose to go too. On December 15, 2000, the parliament resolved by 235 votes to recommend the President to dismiss Kravchenko and to summon Attorney General Potebenko to report about his agency's ability to control the law enforcement agencies and to ensure adequate and unbiased complex testing of the materials related to the disappearance of Georgy Gongadze. While the resolution only "recommends" the President to take certain actions, it is not impossible that the President may choose to follow the recommendations. The by-faction voting results of December 14 deserve special attention. None of the members of the Vidrodzhennya Rehioniv, the People's Democratic Party, the Social Democratic Party (United) voted for the above resolution, and only one member of the Trudova Ukraina and one member of the "Greens" supported it. The division of attitudes to the case suggest that the parliamentary majority - so much advertised as a symbol of the parliament's commitment to being "constructive" in supporting the President's course - may undergo profound transformation that may result in departure of some factions from the "majority". It is worth noting that the departure, should it occur, is unlikely to join the "minority" but will, nevertheless, cause dramatic changes in the parliament's political landscape. The tape scandal is likely to serve as a catalyst of the long-simmering latent conflict between the "pro-presidential" and "pro-government" parts of the "majority". It is worth noting that Prime Minister Victor Yushchenko has finally broken his demonstrative silence on the issue and cautiously announced on December 9, that the government and he personally would "stand by the President shoulder-to-shoulder" (Vlada i Polityka, December 15, 2000). "It's a bitter feeling when you cannot say the whole truth while rumors and insinuations are forming around", he added, probably remembering the scandal over the IMF loans and the parliamentary investigative commission led by Victor Suslov. "I personally am one of the people who do not believe in fidelity of rumors and insinuations," the Prime Minister was quoted as saying by the Ukrainska Pravda (December 9, 2000) after his speech broadcast by the Novyi Kanal.

Hence, it looks like factions of the Ukrainian People's Rukh (Kostenko), the Reformy-Kongres, the Solidarity, and the Batkivshchyna are inclined to move towards forming a new entity, a "pro-government majority", while the others - the Vidrodzhennya Rehioniv, the SDPU90), the Greens and the PDP will consistently occupy the pro-presidential position when it is not identical to the pro-government one. It is not clear yet what the role of the Trudova Ukraina will be in shaping the "majority-minority-nonaligned" relationship. At least some active members of the Trudova Ukraina may be offended by the parliament's drive to wrestle the resignation of Leonid Derkach, and it is hard to predict how the "offended" core will react. So far the faction has made no statements on the events. Noteworthy, during the vigorous discussion of the "Gongadze case" - considered by the Office of Attorney General, since December 7, 2000, to be "united" with the case of unidentified beheaded corpse found in Tarashcha earlier in November, and the "fact of defamation of the top leadership of

Ukraine" - representatives of the "majority" chose to be uniquely silent and made no official comments about the tapes. The reluctance to comment on the subject looks rather symptomatic. The Ukrainian society appears to be stunned by what it has seen and heard, and, perplexed, takes it time to digest the information. Some try to communicate with protesters that put their tents on Kyiv's central square, Maidan Nezalezhnosti, as part of their action "Ukraine without Kuchma". The majority vacantly prepares for the New Year celebration, skeptical of their own ability to make a difference. The level of confidence in the authorities, low enough before, seems to be falling critically, as the society watches the unprecedented - for Ukraine - case of discrediting the state power by the hands of the state power.